

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES EVANS, JR.,

No. C 10-04778 SBA (PR)

Plaintiff,

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

v.

CALIFORNIA SUPREME COURT, et
al.,

Defendants.

Plaintiff has filed a motion for appointment of counsel to represent him in this action.

There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See id. at 1525; Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these factors must be viewed together before reaching a decision on a request for counsel under § 1915. See id.

1 The Court is unable to assess at this time whether exceptional circumstances exist which
2 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at
3 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the
4 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the
5 complexity of the issues involved. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9th
6 Cir. 2004). Accordingly, the request for appointment of counsel at this time is DENIED. This does
7 not mean, however, that the Court will not consider appointment of counsel at a later juncture in the
8 proceedings; that is, after Defendants have filed their dispositive motion such that the Court will be
9 in a better position to consider the procedural and substantive matters at issue. Therefore, Plaintiff
10 may file a renewed motion for the appointment of counsel after Defendants' dispositive motion has
11 been filed. If the Court decides that appointment of counsel is warranted at that time, it will seek
12 volunteer counsel to agree to represent Plaintiff pro bono.

13 This Order terminates Docket no. 6.

14 IT IS SO ORDERED.

15 DATED: 3/28/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JAMES EVANS JR.,

5 Plaintiff,

6 v.

7 CALIFORNIA SUPREME COURT et al,

8 Defendant.

Case Number: CV10-04778 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on March 30, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 James Evans F-06497
16 California State Prison - Corcoran
17 P.O. Box 8800
18 Corcoran, CA 93212

19 Dated: March 30, 2011

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
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United States District Court
For the Northern District of California